

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RAMI ABED ODEH
18653 Slover Avenue
Bloomington, CA 92316

Case No.: 1H 2007 458

OAH No.: 2008030901

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on October 9, 2008.

It is so ORDERED September 29, 2008.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

RAMI ABED ODEH
18653 Slover Avenue
Bloomington, CA 92316

Respondent.

OAH No. 2008030901

Case No. 1H-2007-458

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on August 25, 2008.

Deputy Attorney General Michael S. Cochrane represented complainant.

Rami A. Odeh (respondent) personally appeared and was represented by Stanley H. Rozanski, Esq.

Oral and documentary evidence was received and the matter was submitted on August 25, 2008.

FACTUAL FINDINGS

1. The Statement of Issues against respondent was filed by Stephanie Nunez (complainant), while acting in her official capacity as the Executive Officer of the Respiratory Care Board (the board), State of California.
2. On July 23, 2007, respondent filed an application with the board for a Respiratory Care Practitioner License.
3. On October 26, 2007, the board notified respondent that his application for licensure had been denied based on his 1999 and 2005 criminal convictions.

4. Respondent timely appealed the board's denial of his application and the instant hearing ensued.

5. On April 22, 2005, respondent was convicted, in San Bernardino County Superior Court, after entry of his no contest plea, of one count of violating California Penal Code section 417, subdivision (a)(1) (drawing or exhibiting a deadly weapon), a misdemeanor crime which is substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

6. The facts and circumstances underlying respondent's 2005 conviction were as follows: On August 25, 2004, at about 6:00 p.m., respondent was riding in a vehicle with his nephew. Respondent and his nephew became involved in a "road rage" incident with another vehicle's driver. Ultimately, respondent jumped out of the vehicle in which he was riding, pulled a Buck knife from his pocket, opened it, and yelled for the other driver to "get out of the car, I am going to kick your ass." Respondent ran up to the passenger's side of the other vehicle, leaned through the open window and slashed at the driver with the knife. The other driver moved his vehicle forward and respondent stabbed the passenger's seat as the vehicle moved away. The other driver waited for respondent's vehicle to drive by and followed it as he called the police on his cellular phone. The police stopped the vehicle in which respondent and his nephew were riding and the other motorist positively identified respondent as the person who threatened him with the knife. Consequently, respondent was arrested for assault with a deadly weapon and ultimately pled no contest to "brandishing a weapon."

7. As a result of the 2005 conviction, respondent was placed on three years of summary probation under certain terms and conditions including serving 30 days in jail and paying \$130 to the victim's restitution fund.

8. On April 20, 1999, respondent was issued a misdemeanor citation for possession of less than one ounce of marijuana. Respondent was assessed a \$411 fine for the violation. On October 28, 1999, respondent paid the \$411 fine by sending his payment along with the citation to the San Bernardino County Superior Court. Consequently, court records indicate respondent was "convicted" of violating Health and Safety Code section 11357, subdivision (b) (possession of less than one ounce of marijuana), a misdemeanor crime which is substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

9. The facts and circumstances underlying respondent's 1999 conviction were as follows: On April 20, 1999, respondent was driving a car and failed to stop at the "limit line" at a stop sign. The police officer who stopped respondent asked for permission to search respondent's car because the passenger riding with respondent "looked suspicious." Respondent gave the officer permission and during the subsequent consent search the officer found a "joint" of marijuana under the passenger's seat of the car. Since respondent had custody and control of the vehicle he was cited for possession of the "joint."

10. Respondent presented his testimony, evidence of his honorable discharge from the United States Marine Corps in 2004, several character reference letters and photographs of himself and his nephew in support of his position that his application should be granted notwithstanding his two criminal convictions.

11. Respondent testified that although he was issued the citation for possession of less than one ounce of marijuana in 1999, the marijuana was not his, it belonged to his passenger. Respondent paid the citation without realizing that by paying the citation he was actually pleading guilty to a misdemeanor crime.

12. As concerns his 2005 conviction for “brandishing a weapon,” respondent again claims it was his passenger (his nephew), not he (respondent) who threatened the driver of the other vehicle with a knife. In support of this claim, respondent introduced pictures of himself and his nephew so the ALJ could see how similar in appearance they were.

Respondent’s current claim that he was not the perpetrator of the “brandishing” crime is not credible for the following reasons: (1) The driver of the other vehicle positively identified respondent as the perpetrator at the scene of the crime almost immediately after the crime was committed; and (2) during the instant hearing respondent testified that his nephew did not speak English well.

According to respondent, his nephew was born in Jerusalem, Israel and was visiting from Paris, France on the date the incident occurred. Respondent testified that his nephew speaks French, Hebrew and Arabic and his nephew’s English is so bad that the police focused on respondent during the arrest. A review of the police report corroborates respondent’s testimony. The report noted that respondent’s nephew spoke with an “accent-foreign.”

Since respondent’s cousin did not speak English well, it must have been respondent who yelled “get out of the car, I am going to kick your ass” to the assault victim (a review of the arrest document and preliminary hearing transcript from the criminal proceeding reveal that the victim had no difficulty understanding his assailant.)

Respondent’s denial of guilt during the instant proceedings is not credible and represents a current act of deception.

13. Respondent denies any problems with drugs, alcohol, or anger control.

14. Respondent successfully completed his criminal probation.

15. Respondent is married with two young children.

16. Respondent was only 19 years old at the time of the 1999 possession of marijuana conviction.

17. The reasonable costs of the investigation and prosecution of this case total \$5,530.50.

LEGAL CONCLUSIONS

1. Cause exists for denial of respondent's application pursuant to Business and Professions Code sections 3732, subdivision (b), 3750, subdivisions (d) and (g), and 3752.5 because, as set forth in Findings 5, 6, and 7, respondent was convicted of a crime substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

2. Cause exists for denial of respondent's application pursuant to Business and Professions Code sections 3732, subdivision (b), 3750, subdivisions (d) and (g), and 3750.5 because, as set forth in Findings 8 and 9, respondent was convicted of a crime substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

3. Cause exists for denial of respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(4) and 480, subdivision (a)(3) because, respondent's 2005 and 1999 convictions, as set forth in Findings 5, 6, 7, 8, and 9, involved acts, which if committed by a licentiate would be grounds for revocation.

4. In view of respondent's lack of candor with the court in the instant proceedings, the evidence of rehabilitation presented by respondent, as set forth in Findings 10, 13, 14, 15, and 16, is insufficient to establish respondent's rehabilitation and it would be against the public interest to issue respondent a license.

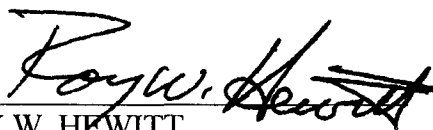
5. The reasonable costs of the investigation and prosecution of this case, recoverable by the board pursuant to Business and Professions Code sections 3753.5, subdivision (a) and 3753.7, total \$5,530.50.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The board's denial of respondent's application for licensure as a Respiratory Care Practitioner is upheld.
2. Respondent shall pay the board \$5,530.50 as cost recovery.

DATED: September 8, 2008



ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings